Before the
Federal Communications Commission
Washington, D.C. 20054

In the Matter of	)	
Inquiry Concerning the Deployment of	)	
Advanced Telecommunications	)	
Capability to All Americans in a Reasonable	)	GN Docket No. 04-54
And Timely Fashion, and Possible Steps	)	
To Accelerate Such Deployment	)	
Pursuant to Section 706 of the	)	
Telecommunications Act of 1996		

COMMENTS OF MTCO COMMUNICATIONS, INC.

MTCO Communications, Inc. (MTCO) submits these comments in response to the Notice of Inquiry released on March 17, 2004 in the above-captioned matter. In the NOI, the Commission seeks information on whether "advanced telecommunications capability", or broadband, is being deployed to all Americans in a reasonable and timely manner and what actions can be taken to accelerate broadband deployment.

MTCO provides competitive broadband services in central Illinois to business and residential customers. MTCO provides broadband services primarily through UNE loops and line sharing in exchanges served by SBC and Verizon. In many of the markets MTCO serves, it is the only competitive alternative to broadband provided by the cable company. MTCO is filing comments in this proceeding because it believes the Commission should reinstitute network access rules in order to further the advanced services goals of Section 706 of the 1996 Act.

A MONOPOLY OR AN OLIGOPOLY IS NOT GOOD ENOUGH – CONSUMERS SHOULD HAVE PLENTY OF CHOICES FOR BROADBAND

When the Commission issued its Triennial Review Order (TRO)[1] in 2003, it effectively set up a system where the best broadband outcome that can occur is an oligopoly. The TRO severely limits the ability of Data LECs (DLECs), like MTCO, from offering competitive broadband service via facilities owned by ILECs. The Commission's goal in the TRO was to achieve competition between various broadband platforms – DSL, cable, wireless, satellite, and electric. However, in markets where each of these platforms is viable, the best outcome that can occur is an oligopoly. But, an oligopoly is not true competition. Oligopolies result in higher prices, fewer choices, and poorer service quality than what occurs in truly competitive markets.

But the real danger with the TRO is in those markets where some, or all, of the market-dominant facilities-based providers choose not to provide broadband service. In those markets, the best that can be hoped for from a consumer perspective is a monopoly – at least then *some company* is providing broadband. The markets where the TRO is most likely to lead to unsatisfactory outcomes are the rural markets served by the RBOCs. In many of those markets, the incumbent cable company is the only broadband provider.[2] MTCO was beginning to serve those markets as the alternative to the broadband monopoly prior to the release of the TRO, and is still trying to do so, but we

[1] In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98 & 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003) ("Triennial Review Order" or "TRO").

[2] Although it doesn't occur where MTCO provides service, MTCO can anticipate a reverse situation where the RBOC is the only broadband provider because the cable company doesn't have facilities to serve the rural areas. Under either scenario, the DSL DLEC represents the only alternative to the monopoly.

have become increasingly frustrated in our ability to serve those markets as a result of actions or inactions by the RBOCs with which we compete.

For example, in 2001, a state law was enacted requiring all ILECs to provide advanced services to 80% of their customers by 2005. However, Verizon received a waiver from the advanced services requirements from the Illinois Commerce Commission and has not to date provided advanced services to the rural markets served by MTCO. In those markets, MTCO represents the only alternative to broadband provided by the cable company. But the TRO has made it increasingly difficult and costly to provide DSL, thereby, leaving the cable company with much less competition that it would otherwise experience. And who suffers in this example? The answer is the consumers who have a take-it-or-leave-it broadband option from the cable company. Without a competitive provider, like MTCO, the consumers don't get the ability to compare prices, quality, and service options. And Verizon has not filled the void by offering advanced services in MTCO's absence despite the supposed relief they were assumed to be getting with the lifting of the line sharing requirements.

WITHOUT REQUIREMENTS IN PLACE TO OPEN THEIR NETWORKS TO COMPETITORS, ILECs HAVE NO INCENTIVE TO BE COOPERATIVE

In the TRO, the Commission abandoned various requirements it previously had for ILECs to open their networks to broadband providers. The most notable change in rules with the TRO was the elimination of the line sharing requirements. Instead of requirements, the Commission has *encouraged* ILECs and CLECs to enter into commercial negotiations for CLEC access to the ILEC's network elements. But commercial negotiations are only fair if the two negotiating parties have relatively comparable leverage and resources. When a company that is small, like MTCO, tries to negotiate with a company that is large, like the RBOCs, the negotiations are one-sided, if they even occur at all. MTCO has requested to enter into long-term line sharing contracts with SBC and Verizon on a number of occasions since the TRO was released but neither SBC or Verizon has thus far been willing to begin negotiations. Rather, both carriers provide ambiguous comments that they intend to have a long-term line sharing offering at some point soon. We have yet to see a proposal, despite repeated requests. With less than five months until the date when line sharing will no longer be required on an interim basis, MTCO is concerned about whether it will still have the ability to place line sharing orders after the 1-year effective date of the TRO.

MTCO has also had difficulty obtaining feeder UNEs from Verizon. In the TRO, the Commission eliminated feeder UNEs from the list of required elements to be unbundled. Part of MTCO's network operation includes accessing distribution facilities from Verizon at their remote terminals and using the feeder facilities of Verizon to transport traffic to MTCO's collocation facilities in the central office. MTCO has been working on obtaining a long-term feeder facility contract with Verizon for over six months and Verizon has delayed the process at every turn. As it currently stands, the language in the agreement has been accepted by both parties' attorneys but has not been signed because Verizon has delayed the process for two months over ordering system issues. In the mean time, consumers are waiting for MTCO's advanced services, which can't be provided until the feeder facilities are provided by Verizon. MTCO is willing and able to provide the service but consumers are left without a DSL option because

Verizon won't provide a key piece of the facilities. MTCO is left with little choice but to wait on Verizon because the elements are no longer subject to the Section 251 remedies that would otherwise give Verizon incentive to provide service in a timely manner.

In addition, MTCO no longer has the ability to adopt agreements reached between the RBOCs and larger CLECs. As a small carrier with limited resources, the opt-in interconnection agreement option was always an attractive choice for MTCO. But any long-term contracts for line sharing and feeder loops that the larger CLECs may have secured with the RBOCs are not available for adoption. For example, SBC has recently refused to file its "commercially-negotiated" contract with Sage at the California Public Utility Commission and has indicated that it will not file its agreement with Sage at any other state commission. Without an option to adopt another carrier's agreement, MTCO fears that it will be stuck with less attractive agreements or will need to incur an increase in legal and consulting fees to obtain a more attractive agreement.

LINE SHARING IS AN EFFICIENT WAY TO PROVIDE SERVICE

When the FCC abandoned its line sharing requirements in the TRO, it left DLECs, like MTCO, with some unattractive choices, two of which are as follows. First, the DLEC could use stand-alone loops if it wanted to continue to only provide broadband services and not voice services. But this choice leads to higher costs for the DLEC and hence a higher cost of broadband for the consumers served by the DLEC. In addition, it forces the consumers of the CLEC to unnecessarily purchase a second line when a single line would be sufficient. Taking it a step further, if the ILEC is not providing DSL, as is the case in many of the areas served by MTCO, and the only other broadband provider is the cable company, what incentive does the cable company have to lower rates and offer better service if its only competitor, the DLEC, now has a higher cost of service?

The second option is for the DLEC to provide voice service. In the TRO, the Commission discusses the revenue opportunities from using the full functionality of the loop – voice, data, and video (paragraph 258) - as opposed to the high frequency portion of the loop under line sharing. But the Commission doesn't undertake a rigorous examination of the costs of providing these additional services. Nor does the Commission provide a thorough comparison of the potential costs and revenues as part of its elimination of the line sharing requirement, despite the fact that line sharing has proven to be an efficient and cost effective way to provide advanced services in a timely fashion – the goal of Section 706 of the 1996 Act.

In addition, the Commission's reliance on commercial negotiations for line splitting results in the same problems discussed in the previous section for small carriers like MTCO when negotiating with RBOCs – lack of leverage and resources to adequately negotiate a decent contract. MTCO inquired of two large CLECs about line splitting and both carriers were reluctant to enter into negotiations for line splitting with MTCO.

Moreover, the Commission's decision to eliminate line sharing for pricing issues is a case of throwing the baby out with the bath water. If the CLECs are faced with an "irrational cost advantage" when line sharing is priced at zero and ILECs over-recover their loop costs when the price is higher than zero, then one option would be to price the HFPL at half the price of the full loop and require the ILEC to reimburse its voice customers for the cost of the loop recovered from the CLEC via the HFPL rate. Then, the ILEC is made whole but does not over-recover its costs, the CLEC pays for the portion of the loop its uses, and the consumer benefits by receiving advanced services at a fair rate while obtaining voice service at a lower rate. MTCO recognizes that some of these issues involve rate setting that are under the control of the state commissions, but MTCO believes that the FCC would have the ability to require the framework for this type of mechanism under its UNE pricing authority while allowing the individual states to work out the specifics on the actual rates used. The alternative arrived at by the Commission in the TRO - to eliminate line sharing and prevent states from requiring line sharing - leads to fewer broadband choices and higher rates in contrast to the goals of Section 706 of the 1996 Act.

ACTIONS THE COMMISSION CAN TAKE TO INCREASE ADVANCED SERVICES DEPLOYMENT

It is MTCO's position that advanced services can be deployed in a more "timely fashion" if the Commission reinstates the line sharing and feeder loop requirements. MTCO has been prevented from providing advanced services to potential customers as a result of ILEC actions and inactions since the release of the TRO. Further, MTCO has not seen the ILECs increasing broadband coverage in rural markets as a result of their reduced network unbundling requirements. Rather, the rural consumers that MTCO wants to serve have been left with a lack of choice in broadband service, thereby, resulting in fewer broadband users than would otherwise have resulted had the Commission maintained its line sharing and feeder loop requirements.

In addition and as previously stated, the best that the Commission can hope for under the TRO is an oligopoly if the platform providers – DSL, cable, wireless, satellite, and electric – in a given market provide broadband services. To make broadband a truly contestable market, with the resulting benefits of lower prices and increased choices, the Commission should require the platform providers to open their networks to competitors at reasonable rates. For the DSL services provided by MTCO, that would mean requiring line sharing, the most efficient and cost effective way for a DLEC to provide broadband services. The Commission should also require ILECs to unbundle feeder loops for instances where competitive broadband providers need to access remote terminals to provide broadband services while taking advantage of the feeder facilities already in place to provide cost effective services.

While an oligopoly is not as good as a truly contestable market, it is at least better than an unregulated monopoly, which may be the result from the TRO in many of the markets MTCO is trying to serve where cable is the only broadband platform available to the mass market. Reinstating requirements for line sharing and feeder loops, elements upon which MTCO developed its business plan, would allow the consumers in those markets to receive a more timely competitive choice for broadband. The resulting competition between MTCO and the cable company should result in lower prices and better service quality, thereby leading to higher broadband take rates. It is MTCO's position that reinstating the line sharing and feeder loop requirements would also help in markets where the ILEC is the only provider of DSL because the requirements would at least allow for DLECs to provide competitive DSL at terms similar to what the ILEC provides to itself or its affiliate.

MTCO appreciates this opportunity to provide comments and respects the Commission's role in weighing the costs and benefits of the various policy options for broadband services. MTCO respectfully requests that the Commission take this opportunity to reevaluate the impact of its TRO decision and reinstate the line sharing and feeder loop requirements that will immediately lead to increased broadband deployment.

Respectfully submitted,
Electronically filed

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